

13-43-204. Office of the Property Rights Ombudsman -- Arbitration or mediation of disputes.

(1) If requested by the private property owner and if otherwise appropriate, the Office of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, a dispute between the owner and a government entity or other type of condemning entity:

- (a) involving taking or eminent domain issues;
- (b) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5, Eminent Domain; or
- (c) involving relocation assistance under Title 57, Chapter 12, Utah Relocation Assistance Act.

(2) If arbitration or mediation is requested by a private property owner under this section, Section 57-12-14 or 78B-6-522, and arranged by the Office of the Property Rights Ombudsman, the government entity or condemning entity shall participate in the mediation or arbitration as if the matter were ordered to mediation or arbitration by a court.

(3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and parties shall treat the matter as if:

- (A) it were ordered to arbitration by a court; and
- (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as provided for in this section was appointed as arbitrator by the court.

(iii) For the purpose of an arbitration conducted under this section, if the dispute to be arbitrated is not already the subject of legal action, the district court having jurisdiction over the county where the private property involved in the dispute is located is the court referred to in Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(iv) An arbitration award under this chapter may not be vacated under the provisions of Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the parties.

(b) The Office of the Property Rights Ombudsman shall issue a written statement declining to mediate, arbitrate, or to appoint an arbitrator when, in the opinion of the Office of the Property Rights Ombudsman:

- (i) the issues are not ripe for review;
- (ii) assuming the alleged facts are true, no cause of action exists under United States or Utah law;
- (iii) all issues raised are beyond the scope of the Office of the Property Rights Ombudsman's statutory duty to review; or
- (iv) the mediation or arbitration is otherwise not appropriate.

(c) (i) The Office of the Property Rights Ombudsman shall appoint another person to arbitrate a dispute when:

- (A) either party objects to the Office of the Property Rights Ombudsman serving as the arbitrator and agrees to pay for the services of another arbitrator;
- (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a reason other than those stated in Subsection (3)(b) and one or both

parties are willing to pay for the services of another arbitrator; or

(C) the Office of the Property Rights Ombudsman determines that it is appropriate to appoint another person to arbitrate the dispute with no charge to the parties for the services of the appointed arbitrator.

(ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights Ombudsman shall appoint an arbitrator who is agreeable to:

(A) both parties; or

(B) the Office of the Property Rights Ombudsman and the party paying for the arbitrator.

(iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

(iv) The Department of Commerce may pay an arbitrator per diem and reimburse expenses incurred in the performance of the arbitrator's duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law, regulations, and rules of Utah and the United States in conducting the arbitration and in determining the award.

(e) The property owner and government entity, or other condemning entity, may agree in advance of arbitration that the arbitration is binding and that no de novo review may occur.

(f) Arbitration by or through the Office of the Property Rights Ombudsman is not necessary before bringing legal action to adjudicate any claim.

(g) The lack of arbitration by or through the Office of the Property Rights Ombudsman does not constitute, and may not be interpreted as constituting, a failure to exhaust available administrative remedies or as a bar to bringing legal action.

(h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

(i) Within 30 days after an arbitrator issues a final award, and except as provided in Subsection (3)(e), any party to the arbitration may submit the dispute, the award, or any issue upon which the award is based, to the district court for review by trial de novo.

(4) The filing with the Office of the Property Rights Ombudsman of a request for mediation or arbitration of a constitutional taking issue does not stay:

(a) a county or municipal land use decision;

(b) a land use appeal authority decision; or

(c) the occupancy of the property.

(5) A member of the Office of the Property Rights Ombudsman, or an arbitrator appointed by the office, may not be compelled to testify in a civil action filed concerning the subject matter of any review, mediation, or arbitration by the Office of the Property Rights Ombudsman.

Amended by Chapter 59, 2014 General Session